

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2001-091
INCIDENT NO. 01-203-e

JUNE 12, 2002

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Damage to Underground
Facilities for 2001
(Maine Tennis and Track)

ORDER APPROVING
CONSENT AGREEMENT

Welch, Chairman; Nugent and Diamond, Commissioners

I. SUMMARY

We approve the proposed Consent Agreement executed by Maine Tennis and Track and the Commission's Damage Prevention Investigator for resolution of this matter.

II. PROCEDURAL HISTORY

On May 10, 2002, the Damage Prevention Investigator assigned to this matter issued a Notice of Probable Violation (NOPV) to Maine Tennis and Track (Respondent) for an incident that occurred on September 10, 2001 at Gorham High School (Morrill Ave). The NOPV indicated that, based on information submitted to the Commission, it appeared that the Respondent committed a probable violation(s) of Maine's Dig Safe law (Title 23 M.R.S.A. § 3360-A, relating to the protection of underground facilities) and the Commission's related rule, Chapter 895, entitled "Underground Facility Damage Prevention Requirements."

The NOPV indicated the incident location, the source of the report received by the Investigator, and the nature of the violation or violations charged. In addition, the NOPV indicated the range of potential penalties to which the Respondent could be subject and the Investigator's recommended penalty of a \$500 fine plus mandatory Damage Prevention Training for this incident. The NOPV described the process for the Respondent to acknowledge the violation(s) and to agree to the penalty under the Consent Agreement as well as the procedural options available to the Respondent to contest this charge.

The Respondent opted to enter into a Consent Agreement with the Investigator, thereby accepting the Investigator's findings and recommended penalty. The Respondent filed the signed Consent Agreement and a check for \$500 with the Commission on May 17, 2002.

III. LEGAL AUTHORITY

Under 23 M.R.S.A. §3360-A (commonly known as the Dig Safe Law), the Maine Public Utilities Commission is responsible for enforcing the provisions of the law. The statute also directs the Commission to adopt procedures to gather information to hear and resolve complaints of failure to comply with the law. These procedures are contained in Chapter 895 of the Commission's Rules, entitled "Underground Facility Damage Prevention Requirements," which became effective November 12, 2000.

IV. DECISION

After review of the evidence submitted in this case, we find the proposed Consent Agreement presents a reasonable resolution of this matter and approve it. The Respondent is hereby required to comply with the terms of the Consent Agreement or be subject to full penalty of law. As described in the Consent Agreement, the fine portion of this penalty will be waived if the required Damage Prevention Training is completed by August 5, 2002. In anticipation of compliance with this provision, we will refund the Respondent's \$500. However, this fine will be recollected if the equipment operator does not attend the required training by the August 5, 2002 deadline.¹

Accordingly, we

ORDER

1. That the Consent Agreement is approved for full effect as of the date of this Order; and
2. That a copy of this Order, a signed Consent Agreement and a refund check for \$500 be sent to:

John E. Cornish, President
Maine Tennis and Track
24 Mayoil Rd.
Gray, ME 04039

¹ Under the Consent Agreements that allowed waivers of the fine, Respondents were not required to submit the fine portion of the penalty until after the required training deadline of August 5, 2002, and then only if the training was not completed. Because, based on a telephone conversation between the Commission's Damage Prevention Investigator and the Respondent, it appears that the Respondent was not clear on when he was required to submit the fine and because the equipment operator involved in the incident is registered for one of the Commission's Damage Prevention training sessions scheduled prior to the August 5, 2002 deadline, we will refund the Respondent's \$500 at this time, in anticipation of compliance with the waiver provision.

Dated at Augusta, Maine this 12th Day of June 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.